IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 137 of 2001.

Judgment reserved on 18th May, 2007.

Date of decision June 1, 2007.

Suresh Kumar …..**Petitioner.**

Versus

The Registrar, Regional Engineering College, and another ….**Respondents.**

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The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner	**Mr. Rajinder Dogra, Advocate.**
For respondent No. 1:	**Mr. K.D.Sood, Advocate.**
For respondent No. 2	**Mr. B.N.Gupta, Advocate.**

Dev Darshan Sud, J. (Oral).

The petitioner has challenged assignment of seniority below respondent No. 2 by respondent No. 1. The undisputed facts are that the petitioner appeared in the interview for Laboratory Attendants conducted by respondent No. 1 and was appointed by order dated

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

20.2.1996. Annexure P-1 is Office order dated 27.8.1998, confirming the petitioner and other employees. The petitioner has been shown at Sr. No. 15 in the list above respondent No. 2 who is at Sr. No. 16. The date of joining was shown as 22.2.1996 and that of respondent No. 2 as 24.2.1996. In the tentative seniority list Annexure P-2, again respondent No. 1 was placed at Sr. No. 2 below Shri Ramesh Chand and above the respondent who is at Sr. No. 3. In the final seniority list, Annexure P-3 which was circulated on 22.5.2000, petitioner was placed at Sr. No. 3 below respondent No. 2. Being aggrieved by this act on the part of the respondents, a detailed representation Annexure P-4 was filed by the petitioner stating therein that he had been downgraded. By communication Annexure P-5, the representation was rejected on the ground that respondent No. 2 was appointed against a reserved vacancy through direct recruitment and as a consequence, would rank senior above the petitioner. The letter states that respondent No. 2 has been placed above the petitioner, as the selection committee determined that he is higher in merit.

Reply to the petition has been filed by the respondents. Respondent No. 1 has urged that there are three posts of Laboratory Attendants. Applying the 100 point roster for direct recruitment, the first was to be filled in from scheduled caste category and the second and third from amongst the general category. The first post which was created in 1987 was filled in June 1988 from the general category, as there could be no reservation for a single post. According to the University, while recruiting incumbents against the second and third posts sanctioned in May 1995, backlog for the scheduled caste category was to be filled by appointing a person belonging to the said category against roster point No. 2 which was otherwise meant for general category. This is the justification which is given by the respondents for assigning seniority to respondent No. 2 above respondent No. 1. Annexure R-1 is a communication addressed by the Commissioner-cum-Secretary (Personnel) to the Government of Himachal Pradesh to all departments dealing with reservation and carry forward of vacancies. The reply filed by respondent No. 2 is no different.

I have heard the learned counsel for the parties and gone through the record.

It is undisputed that both the petitioner and respondent No. 2 joined on different dates, the petitioner joining earlier in point of time. In so far as the question of reservation is concerned, that is not disputed. Normally, it is the length of service in the cadre which is the accepted rule for assignment of seniority. I have not been shown any rule which by a deeming provision or otherwise assigns seniority with retrospective effect, by ante dating it to the time when a reserved post is to be filled in. From the documents which have been filed by the respondents, it is clear that the only stipulation contained is that reserved vacancies should not be allowed to lapse. There is nothing which shows that the seniority has to be assigned from the date when the vacancy is deemed to have accrued, or that a person recruited against a carry forward vacancy takes precedence in terms of seniority against the normal rule of continuous service against a post.

In these circumstances, this writ petition is allowed. Annexure P-3, the final seniority list, placing

the petitioner below respondent No. 2 is quashed; the rejection of the petitioner's representation Annexure P-5 is also quashed and set aside. A direction is issued to respondent No. 1 to redraw the seniority list by showing the petitioner above respondent No. 2. Writ petition is disposed of accordingly. There shall be no order as to costs.

June 1, 2007(PC). **(Dev Darshan Sud), J.**